CF0000058048

Cr.A. 953/95

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 23541/47 Name રામ પ્રસાદ કુલાર

Father's name ધરમ દાસ કુલાર સાકિન ધુરરા થાના મનેન્દ્રગઢ

Residence જિલા સરગુજા (મ.પ્ર) Age 35 વર્ષ

Sentenced to આજીવન કારાવાસ On 24/5/95

Under section 302 ભા.દ.વિ. by અતિરિક્ત સત્રન્યાયાધીશ મનેન્દ્રગઢ

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... 24.5.95

2 Date on which copy received ... 16/6/95

3 Date on which Appeal sent ... 6/95

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No. 23541/47 Name રામ પ્રસાદ આદિ ધરમ દાસ

Confined in ... કેન્દ્રીય ... Jail ... અમ્બિકાપુર (મ.પ્ર)

No. 325/Law/ Dated ... 1995 20/6/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિરિક્ત જેલીમકુ કરન્યાયાલય અજ્જુ

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સેલગ્રા નિર્ણય પત્રિકા
સત્ર પ્રકરણ ૩૫૦૨
348/94

Superintendent
કેન્દ્રીય જેલ, અમ્બિકાપુર (મ.પ્ર.)

Date of receipt in ... office ...

Date of receipt record to accompany the ...

Memo of Appeal to the Appellate court ...

No ... Dated ... 1995

Forwarded to the ...

... 1995

Date of receipt in Appellate Court ...

High Court of Madhya Pradesh
JABALPUR
25 OCT 1995
Reg. No. 313
Receipt Clerk
High Court, Jabalpur

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(8)

आदेश पत्रक

मामला क्रमांक Cr.A. 953/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 953 of 1995

Appellant : Ram Prasad Kalar

Vs.

Respondent : State of Madhya Pradesh

Shri Abhay Tiwari, Advocate with Smt. Savita Tiwari, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri M.P.S. Bhatia, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(08.02.2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 24.05.1995 whereby learned Additional Sessions Judge, Manendragarh after holding the accused/appellant guilty under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life.

2. The case of the prosecution, in brief, is that on the fateful day P.W. 1 Juganlal along with accused and his wife Bootibai (since deceased) went towards the forest for collecting wood. First of all three of them cooked meal, took the meal and thereafter accused Ram Prasad

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मामला क्रमांक Cr.A. 953/95 सन् 200—

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	along with his wife went ~~on~~ to the one side of the forest to collect wood whereas P.W. 1 Juganlal went ~~on~~ to the other side. In the evening Juganlal returned to his house and when the accused and his wife did not return, Mohanlal (P.W.2) enquired from Juganlal about the whereabouts of the accused and his wife. Juganlal disclosed to him that the accused has ran away after committing murder of his wife Bootibai and while he was running he informed him about that fact and asked him to inform you also about the incident, on which Mohanlal lodged the report (P-1) in the Police Station- Manendragarh. Receiving this report Station House Officer, Manendragarh left for the scene of occurrence, prepared Panchanama (P-2) of the dead body of Bootibai. He also took into possession the plain soil and bloodstained soil from the place of occurrence under P-3. Based on the memorandum of the accused (P-4) he recovered the weapon of offence-axe under P-5. The body of Bootibai was sent for postmortem examination to the Govt. Hospital, Manendragarh where Dr. Suresh Tiwari (P.W.4) conducted postmortem on the body of Bootbai and prepared the postmortem repot (P-6) in which he opined that the cause of death is shock (hemorrhage) due to severe bleeding from the injuries on neck vessels. The investigating officer also prepared the site plan (P-7) of the place of incident. Merg intimation (P-8) was given by Mohanlal. After completion of the investigation charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Manendragarh who in turn committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge, Manendragarh received the case on transfer for trial.	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. The prosecution in order to establish the crime against the accused examined six witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he stated that in the first instance Juganlal and his wife went to the forest and he reached thereafter. He has further stated that he had not committed the murder of his wife, she died on account of falling of tree on her and as a result of which he and Jugnu became terrified and he informed about the incident to Choukidar and he is innocent.

4. Learned Additional Sessions Judge, after hearing the arguments advanced by learned Additional Public Prosecutor and learned counsel for the accused/appellant convicted and sentenced the accused as mentioned in paragraph -1 of this judgment.

5. We have heard learned counsel for the accused/appellant and learned counsel for the State/respondent.

6. Homicidal death of Bootibai is not in dispute.

7. As far as involvement of the accused/appellant in crime in question is concerned, there is no direct evidence in this case. The case of the prosecution rests on circumstantial evidence which is as follows-

i) That P.W.1 Juganlal, the accused and the deceased left together in the morning for forest to bring wood and for that purpose accused and deceased went towards one side of the forest whereas Juganlal went to the other side;

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ii) That when Juganlal was coming back accused met him on the way and informed that he has committed murder of his wife Bootibai with the axe and asked him to inform his landlord Mohanlal about the same;

iii) That the weapon of offence was recovered at the instance of the accused.

8. In order to base conviction on the circumstantial evidence as per the settled principles laid down by the Hon'ble Apex Court, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

9. Learned counsel for the appellant argued that there is only one witness in this case and conviction has been based on the evidence of P.W.1 Juganlal. The evidence of this witness is not worth reliance and it does not inspire confidence of the Court as when he returned to his house he did not disclose the fact of informing him by the accused that he has committed murder of his wife Bootibai and only on the next day when landlord of the accused Mohanlal enquired from him, he disclosed that fact, therefore, the above conduct of Juganlal makes his evidence doubtful as in the normal course when Juganlal was having knowledge of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

such a heinous crime committed by the accused, he ought to have informed the police or Mohanlal- the landlord of the accused.

10. It is true that in the first instance Juganlal did not inform anybody about the extra judicial confession made by the accused before him regarding commission of murder of his wife Bootibai and he has stated in paragraph 3 of his statement that he remained silent because he was terrified and when on the next day Mohanlal enquired about the accused and his wife, then only he disclosed the fact that accused had informed him that he committed murder of his wife Bootibai with the axe and he saw him running with the axe. The above conduct of this witness could not be doubted for the reason that in the cross-examination of this witness nothing has come on record to show that this witness was having any animosity against the accused. Moreover, he has explained that he was terrified on that day, therefore, he could not disclose this fact to Mohanlal. However, the fact that this person accompanied the accused to the forest has not been disputed. Even by the accused in his statement under Section 313 of the Cr.P.C. it has been admitted that he and this witness Juganlal along with the deceased went together in the forest and he raised a false plea that his wife died on account of falling of tree on her and that is why he and Juganlal were terrified and informed about the same to Choukidar but Choukidar has not been examined in defence, therefore, the presence of Juganlal with the accused on the fateful day is not disputed and as such the evidence of Juganlal inspires confidence.

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	11. Moreover, the extra judicial confession lends support from the medical evidence. Dr. Tiwari (P.W. 4) has stated that he conducted postmortem on the body of Bootibai on 15.06.1994 and found that there was a cut injury on the neck in the size of 5 c.m. and another injury was below the injury No. 1 in the length of 7 cm., the muscles and the blood vessels were found cut, even the wind pipe and the neck bone were found cut and the injuries were caused by sharp edged weapon and the death was homicidal in nature, therefore, the evidence of P.W. 1 Juganlal that accused made extra judicial confession before him that he has committed murder of his wife, further stands corroborated by the medical evidence also. Even the weapon of offence – axe was recovered at the instance of the accused in pursuance of the memorandum (P-4) given by the accused. Therefore, from the above circumstantial evidence the crime against the accused has been proved to the hilt and these circumstantial evidence show that the accused was the author of crime in question and there is no possibility that any third person has committed the crime. 12. In view of the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court and there is no ground for interference with the findings of the trial Court. 13. In the result, the appeal being devoid of merits deserves to be dismissed and the same is accordingly dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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